

## **REMARKS**

Applicant wishes to thank the Examiner for reviewing the present application. Applicant acknowledges that claims 1-7, 9-10 and 12 are allowed.

Claim 11 has been rejected under 35 U.S.C 101 as being directed to non-statutory subject matter. Claim 11 has been amended replacing "A data carrier containing" with "A computer readable data carrier having". Applicant believes that this amendment overcomes the rejection and places claim 11 in condition for allowance.

In the Office Action, the Examiner objected to "data carrier" as encompassing both computer readable media such as a magnetic or optical disc, and what was alleged to be non statutory matter such as paper or a carrier wave.

Claim 11 as amended specifies that the data carrier be computer readable without limiting the data carrier to any particular type. Applicant disagrees that paper and a carrier wave is non-statutory, in particular where the data carrier is computer readable. For example, a punch card is implemented using paper but is computer readable and contains instructions for operating a computing device. Similarly, a data carrier such as a computer cable that carries instructions, e.g. downloaded from a website, is believed to be statutory since the carrier has the instructions that, when read by a computer, directs the computer to operate in a certain way. The physical form of the data carrier is not determinative of statutory subject matter but rather the instructions carried by it.

Applicant notes that a compact disc stores computer readable instructions in the form of a series of pits in a layer of the disc, which is analogous to a punch card or carrier wave. As such, a computer readable data carrier is believe to encompass all of these examples as they each provide a useful, concrete and tangible result. Applicant also notes that MPEP does not treat carrier waves or punch cards any differently than other forms of computer readable media.

Since the data carrier recited is computer readable and includes computer executable

instructions, claim 11 is believed to be statutory and comply with 35 U.S.C. 101.

The following discussion is taken from the USPTO OG Notices, November 22, 2005 "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (the "Guideline").

In Annex IV of the Guideline, "functional descriptive material" is defined as consisting of:

"data structures and computer programs which impart functionality when employed as a computer component".

Applicant believes that a computer readable data carrier containing computer readable instructions falls under this definition. The Guideline further indicates that:

"When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since the use of technology permits the function of the descriptive material to be realized."


Applicant believes that a computer readable data carrier is directly applicable to the above statement. A data carrier embodied as a carrier wave has the computer readable instructions structurally and functionally interrelated to the medium and enables the technology to permit the function of the descriptive material to be realized. Therefore, the principles outlined above are equally applicable to a carrier wave.

In *re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994), a claim to a data structure stored on a computer readable medium that increases computer efficiency was held statutory. Claim 11 is directed to computer readable media and encompasses both those where the computer readable instructions are stored and those where they are provided to a computing device via a carrier wave.

Therefore, according to the Guideline, claim 11 is believed to constitute patentable subject matter.

In view of the foregoing, Applicant believes that claim 11 is in condition for allowance and action to that end is respectfully requested.

Respectfully submitted,

  
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